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8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA

10 ANTHONY BRIDGET,
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12 Plaintiff,

13 v.

14 TELECARE CORPORATION, LA
15 CASA MENTAL HEALTH
16 REHABILITATION CENTER, KIM
ISHIMIA; and DOES 1 through 100
inclusive,

17 Defendants.
18

Case No. 2:19-cv-01224-AB (JCx)

**ORDER DENYING PLAINTIFF'S
MOTION TO REMAND**

19 Before the Court is Plaintiff Anthony Bridget's ("Plaintiff") Motion to
20 Remand, filed March 15, 2019. (Dkt. No. 16.) Defendants Telecare Corporation, La
21 Casa Mental Health Rehabilitation Center, Kim Ishimine, and DOES 1 through 100
22 inclusive (collectively "Defendants") opposed the motion, and Plaintiff filed a reply.
23 (Dkt. Nos. 17-18.) The Court deemed this matter appropriate for decision without oral
24 argument and took the matter under submission. *See* Fed. R. Civ. P. 78; C.D. Cal. L.
25 R. 7-15. For the following reasons, the Court **DENIES** Plaintiff's Motion.

26 **I. BACKGROUND**

27 Plaintiff worked at Telecare Corporation from December 7, 1999 to March 9,
28 2018, the date he was terminated. (Dkt. No. 1-1 ("Compl.") ¶¶ 8, 12.) During the

1 course of his employment, Plaintiff was a member of a labor union, and a collective
2 bargaining agreement (“the CBA”) governed the terms of his employment. (*See* Dkt.
3 No. 1, Notice of Removal (“NOR”) ¶ 10.) The CBA outlines the grievance and
4 arbitration procedures to resolve employment disputes. (Dkt. No. 17, Defs.’ Opp’n to
5 Mot. to Remand (“Opp’n”) at 6.) The CBA was in effect at the time of Plaintiff’s
6 termination. (NOR ¶ 10.)

7 On January 3, 2019, Plaintiff filed a Complaint in Los Angeles County Superior
8 Court, alleging Defendants “discriminat[ed] against plaintiff, in whole or in part on
9 the basis of plaintiff’s disability/medical condition (actual, perceived, and/or history of
10 physical disability) and/or age.” (*Id.* ¶ 1; Compl. ¶ 19a.) Plaintiff alleges that
11 Defendants’ “willful, knowing, and intentional discrimination, harassment, and
12 retaliation against plaintiff” caused him to suffer “substantial losses of earnings” and
13 “other employment benefits.” (Compl. ¶ 21.)

14 Based on these allegations, the Complaint asserts seven causes of action: (1)
15 violation of the Fair Employment and Housing Act (“FEHA”), Cal. Gov’t Code
16 § 12900, *et seq.*; (2) breach of express oral contract not to terminate employment
17 without good cause; (3) breach of implied-in-fact contract not to terminate
18 employment without good cause; (4) negligent hiring, supervision, and retention; (5)
19 wrongful termination in violation of public policy; (6) violation of California Labor
20 Code section 1102.5; and (7) intentional infliction of emotional distress (“IIED”). (*Id.*
21 at 7-13.) Plaintiff seeks compensatory damages, punitive damages, declaratory relief,
22 reasonable attorneys’ fees, costs, and prejudgment and post-judgment interest. (*Id.* at
23 14.)

24 On January 17, 2019, Defendants were served with the summons and
25 complaint. (NOR ¶ 3.) Defendants timely removed this action to this Court based on
26 federal question jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1441. (*See generally*
27 NOR.) Specifically, Defendants assert that Plaintiff’s claims are preempted by section
28 301 of the Labor Management Relations Act (“LMRA”). Now, Plaintiff moves to

1 remand this action to state court.

2 **II. LEGAL STANDARD**

3 **A. Removal**

4 As courts of limited jurisdiction, federal courts have subject matter jurisdiction
5 only over matters authorized by the Constitution and Congress. *Kokkonen v.*
6 *Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994). A defendant may remove a
7 civil action filed in state court to federal court if it presents a federal question or is
8 between citizens of different states and involves an amount in controversy over
9 \$75,000. 28 U.S.C. § 1441(a). A case presents a “federal question” if a claim arises
10 under the Constitution, laws, or treaties of the United States. *Id.* § 1331.

11 “The removal statute is strictly construed against removal jurisdiction, and the
12 burden of establishing federal jurisdiction falls to the party invoking the statute.” *Cal.*
13 *ex rel. Lockyer v. Dynege, Inc.*, 375 F.3d 831, 838 (9th Cir. 2004) (citing *Ethridge v.*
14 *Harbor House Rest.*, 861 F.2d 1389, 1393 (9th Cir. 1988)). “Federal jurisdiction must
15 be rejected if there is any doubt as to the right of removal in the first instance.” *Gaus*
16 *v. Miles, Inc.*, 980 F.2d 564, 566 (9th Cir. 1992).

17 **B. LMRA Preemption**

18 Pursuant to section 301(a) of the LMRA, federal district courts have original
19 jurisdiction over “[s]uits for violation of contracts between an employer and a labor
20 organization.” 29 U.S.C. § 185(a). “Section 301 governs claims that involve right(s)
21 granted to an employee solely based on a collective bargaining agreement or right(s)
22 that are ‘substantially dependent’ on a [collective bargaining agreement].” *Partida v.*
23 *Stater Bros. Markets*, No. ED CV 18-02600 SJO (KKx), 2019 WL 351874, at *2
24 (C.D. Cal. Jan. 29, 2019) (quoting *Kobold v. Good Samaritan Reg’l Med. Ctr.*, 832
25 F.3d 1024, 1033 (9th Cir. 2016)). This “ensure[s] uniform interpretation of collective-
26 bargaining agreements” and promotes the “consistent resolution of labor-management
27 disputes.” *Lingle v. Norge Div. of Magic Chef, Inc.*, 486 U.S. 399, 404 (1988) (citing
28 *Teamsters v. Lucas Flour Co.*, 369 U.S. 95, 103 (1962)). The LMRA preempts a state

1 law claim if it is so “inextricably intertwined” with the terms of a CBA that its
2 resolution requires interpretation of those terms. *Id.* at 413.

3 However, state law claims “with no other relationship to a collective-bargaining
4 agreement beyond the fact that they are asserted by an individual covered by a CBA
5 are not preempted by Section 301.” *Partida*, 2019 WL 351874, at *3 (citing
6 *Franchise Tax Bd. v. Constr. Laborers Vacation Tr. for So. Cal.*, 463 U.S. 1, 25
7 (1983)). If state law rights can be enforced without interpreting the terms of the CBA,
8 a claim based on those rights is not preempted by Section 301. *See Caterpillar, Inc. v.*
9 *Williams*, 482 U.S. 386, 391 (1987).

10 **III. DISCUSSION**

11 Plaintiff moves to remand this action to Los Angeles County Superior Court on
12 the ground that his claims are not preempted by the CBA and therefore does not
13 present a federal question.¹ The Court must first determine whether Plaintiff’s claims
14 are “inextricably intertwined” with the CBA. *Lingle*, 486 U.S. at 402; *see Allis-*
15 *Chalmers Corp. v. Lueck*, 471 U.S. 202, 213 (1985). Second, the Court must
16 determine whether to exercise supplemental jurisdiction over Plaintiff’s state law
17 claims.

18 **A. LMRA Preemption Requirements**

19 “[T]he preemptive force of [S]ection 301 is so powerful as to displace entirely
20 any state claims based on a collective bargaining agreement, and any state claim
21 whose outcome depends on analysis of the terms of the agreement.” *Young v.*

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23 ¹ Plaintiff’s counsel failed to meet and confer prior to filing this Motion in violation of
24 Local Rule 7-3, despite having been admonished for ignoring this requirement in
25 *Tipton v. Airport Terminal Services, Inc.*, No. 2:18-cv-09503-AB (JEMx) and *Fisher*
26 *v. HNTB Corp.*, No. 2:18-cv-08173-AB (MRWx). The Local Rules are not optional.
27 Although the Court, in its discretion, will nonetheless rule of the merits of the dispute
28 to determine whether it has jurisdiction, the Court warns Plaintiff’s counsel that any
future failure to engage in the required meet-and-confer process will result in
appropriate sanctions. Plaintiff’s counsel is **ORDERED** to inform every attorney at
Shegerian & Associates, Inc. that if they fail to engage in the required meet-and-
confer process *in any case* before this Court, the Court will deny the Motion outright.

1 *Anthony's Fish Grottos, Inc.*, 830 F.2d 993, 997 (9th Cir. 1987) (citations omitted). In
2 *Burnside v. Kiewit Pacific Corp.*, 491 F.3d 1053 (9th Cir. 2007), the Ninth Circuit
3 articulated a two-part test to determine whether a state law cause of action is
4 preempted by Section 301. First, the court must determine “whether the asserted
5 cause of action involves a right conferred upon an employee by virtue of state law, not
6 by a CBA. If the right exists solely as a result of the CBA, then the claim is
7 preempted.” *Id.* at 1059. Second, if the right exists independently of the CBA, the
8 Court “must still consider whether it is nevertheless ‘substantially dependent on
9 analysis of a collective-bargaining agreement.’” *Id.* (citing *Caterpillar, Inc.*, 482 U.S.
10 at 394). “If such dependence exists, then the claim is preempted by [S]ection 301; if
11 not, then the claim can proceed under state law.” *Id.* at 1059-60 (citations omitted). If
12 “there is no dispute over the meaning of any terms within the [CBA], resolution of the
13 central issue . . . does not depend on interpretation of the [CBA].” *Detabali v. St.*
14 *Luke's Hosp.*, 482 F.3d 1199, 1203 (9th Cir. 2007).

15 **B. Plaintiff's Breach of Express Oral And Implied-In-Fact Contract**
16 **Claims Are Preempted.**

17 Plaintiff's contract claims are preempted by section 301. Plaintiff alleges in his
18 complaint that his employer, independent of the CBA, expressly or impliedly agreed
19 that he would not be terminated absent good cause.

20 The CBA provides that “the Employer may suspect, discharge, or otherwise
21 discipline employees for just cause” and that the “Employer retains the exclusive right
22 to manage the operations of the employer and to direct the working force. Among
23 those exclusive rights . . . is the right to . . . discharge for just cause.” (Dkt. No. 17-2,
24 §§ VII, art. 7A; *id.* § XXXVIII, art. 38.) The CBA further provides that Plaintiff's
25 employment is “governed exclusively by and limited to the terms and provisions of
26 the Agreement” and that “[n]o addition to, alteration, modification, practice or waiver
27 of any term, provision, covenant or condition or restriction of th[e] Agreement shall
28 be valid, binding, or of any force or effect unless made in writing and executed by the

1 Employer and the Union.” (*Id.* § XLIV, art. 44.)

2 Here, the terms and conditions of Plaintiff’s employment are fully set forth in
3 the CBA. *See Chmiel v. Beverly Wilshire Hotel Co.*, 873 F.2d 1283, 1286 (9th Cir.
4 1989) (“A claim based upon an independent employment contract is not completely
5 preempted if it concerns a job not governed by a collective bargaining agreement.”).
6 Plaintiff’s express oral and implied-in-fact contract claims are inextricably intertwined
7 with and substantially dependent on an interpretation of the CBA. Plaintiff’s union
8 waived express oral and implied-in-fact guarantees of job protection. Because
9 Plaintiff’s second and third causes of action “concern[] a job position governed by the
10 collective bargaining agreement” they are preempted by section 301 of the LMRA,
11 providing the Court with original federal jurisdiction.² *Id.*; 28 U.S.C. § 1331.

12 The Court finds that Plaintiff’s remaining claims are within the supplemental
13 jurisdiction of this Court. *See Brown v. Brotman Med. Ctr., Inc.*, 571 F. App’x 572,
14 576 (9th Cir. 2014) (“[A] district court may exercise supplemental jurisdiction over
15 claims that are brought in conjunction with claims that are preempted by the
16 LMRA.”). Thus, to the extent that Plaintiff’s remaining claims fall outside the scope
17 of preemption, the Court exercises supplemental jurisdiction.

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23 ² In his reply, Plaintiff agreed to dismiss all of his preempted claims, specifically his
24 claims for breach of express oral and implied-in-fact contract claims not to terminate
25 employment without good cause, such that only state law claims remain. But, as of
26 the date of this Order, Plaintiff has not filed an amended complaint. Nor has he
27 voluntarily dismissed the claims implicating federal question jurisdiction. If Plaintiff
28 files a first amended complaint that does not assert any preempted claims and asserts
only state law claims, Plaintiff must file a status report that references this Order. The
Court notes that it is inclined to remand the case sua sponte if Plaintiff dismisses his
claims for breach of oral contract and breach of implied-in-fact contract because the
remaining claims are not preempted by the LMRA.

1 **IV. CONCLUSION**

2 For the foregoing reasons, the Court **DENIES** Plaintiff's Motion to Remand. If
3 Plaintiff files an amended complaint with only non-preempted state law claims, he
4 must file a status report informing the Court that it lacks subject matter jurisdiction.

5 **IT IS SO ORDERED.**

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7 Dated: May 1, 2019



8 HONORABLE ANDRÉ BIROTTE JR.
9 UNITED STATES DISTRICT COURT JUDGE